

PROTECTION OF HUMAN RIGHTS: INTERPLAY BETWEEN INTERNATIONAL
HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW

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Abstract

In recent decades, armed conflicts have ruined the lives of millions of people. Serious violations of international human rights law and human rights are common in many armed conflicts. In some cases, some of these crimes may be annihilation, war crimes, or crimes against humanity. International human rights law and international humanitarian law share the purpose of preserving the dignity and humanity of all. Over the years, the General Assembly, the Human Rights Commission and, more recently, the Human Rights Council have observed that, in the armed conflict, the parties to this conflict have a legally binding obligation regarding the rights of people involved in the conflict. Although differing in scope, international human rights law and international aid law provide a range of protections for people in armed conflict, whether civilians, non-combatants or participants in war. Indeed, as it has been noted, among other things, by national and regional courts, as well as by UN agencies, treaties and special human rights organizations, both of these jurisdictions operate in situations of war and provide corresponding protection and reinforcement.

INTRODUCTION

International human rights law and international humanitarian law share the purpose of preserving the dignity and humanity of all. Over the years, the General Assembly, the Human Rights Commission and, more recently, the Human Rights Council have observed that, in the armed conflict, the parties to this conflict have a legally binding obligation regarding the rights of people involved in the conflict. Although differing in scope, international human rights law and international aid law provide a range of protections for people in armed conflict, whether civilians, non-combatants or participants in war. Indeed, as it has been noted, among other things, by national and regional courts, as well as by UN agencies,

treaties and special human rights organizations, both of these jurisdictions operate in situations of war and provide corresponding protection and reinforcement.

International human rights law is a system of international laws designed to protect and promote the human rights of all people. These rights, available to everyone creatures, whatever their nationality, place of residence, gender, nationality or nationality, colour, religion, language, or other status, are interdependent, trustworthy and inseparable. They are often articulated and enforced by law, by agreement, international customary law, general principles and flexible law. Human rights include rights and obligations. International human rights law sets out the obligations of the State to act in certain ways or to refrain from doing certain things, in order to promote and protect human rights and fundamental freedoms for individuals or groups.

International welfare law is a set of laws that seek, for practical reasons, to reduce the effects of war. It protects people who do not participate or no longer take part in war, and it protects the ways and means of war. Its scope, therefore, is limited to measuring the conditions of armed conflict. International social law is part of the *ius in bello* (the law on how energy can be used), which must be separated and separated from the *ius ad bellum* (the legal law on the use of force). The use of force is not permitted under the Charter of the United Nations. However, international humanitarian law should be applied equally by all parties to all armed conflicts, regardless of whether the cause is right. This equality between belligerents is also very divisive in the controversy, in which applicable international humanitarian law, in crime, applies only to criminal law and human rights law enforcement laws.¹

Over the past few years, the application of international human rights law and international humanitarian law has raised a number of questions about the implementation of certain protections guaranteed by both legal entities. Their application at the same time has created confusion about the parties' obligations to disputes, the extent of these obligations, the standards to be applied and the beneficiaries of these protections. For years it has been argued that the difference between international human rights law and international humanitarian law is that the first was used in times of peace and later in conflict situations.

¹ See general comments Nos. 29 (2001) on states of emergency (art. 4), para.3, and 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, para. 11.

Modern international law, however, recognizes that this distinction is not true. Indeed, it is widely known these days by the international community that since human rights obligations arise from the recognition of all human rights and that these rights can be violated both in times of peace and in times of war, international human rights law continues to apply in times of war. In addition, there is nothing in the human rights treaties that indicates that they will not be so it applies in times of war. For this reason, both legal frameworks - international human rights law and international humanitarian law - are regarded as complementary sources of responsibility in war situations.

For example, the Human Rights Committee, in its general remarks Nos. 29 (2001) and 31 (2004), recalled that the International Covenant on Human and Political Rights also applied in the case of a war that had international humanitarian law. The Human Rights Council, in its decision 9/9, reaffirmed that human rights law and international humanitarian law go hand in hand. The Council considers that all human rights require equal protection and that the protection afforded by human rights law continues in the war, being scrutinized when international law acts as a *lex specialist*. The Council also stressed the need for effective measures to ensure and monitor the realization of human rights in relation to persons living in conflict situations, including migrants, and that effective protection must be provided in accordance with international human rights law and applicable international humanitarian law.

SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

While international human rights law and international humanitarian law have different historical and doctrinal roots, both share the aim of protecting all persons and are grounded in the principles of respect for the life, well-being and human dignity of the person.² From a legal perspective, both international human rights law and international humanitarian law find

WORDS SPEAK

² In *Prosecutor v. Anto Furundžija*, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia emphasized that the general principle of respect for human dignity was the “basic underpinning” of both human rights law and international humanitarian law. Case No. IT-95-17/1-T, Judgement of 10 December 1998, para. 183.

their source in a series of international treaties, which have been reinforced and complemented by customary international law.³

Taking into account that international human rights law applies at all times—whether in peace or in war—and that international humanitarian law applies only in the context of armed conflicts, both bodies of law should be applied in a complementary and mutually reinforcing way in the context of armed conflict.

Moreover, certain violations of international human rights and humanitarian law constitute crimes under international criminal law, so other bodies of law, such as the Rome Statute of the International Criminal Court, could, therefore, also be applicable. International criminal law and criminal justice on war crimes implement international humanitarian law, but they also clarify and develop its rules. Similarly, other bodies of law, such as international refugee law and domestic law, will often also be applicable and may influence the type of human rights protections available.⁴

1. INTERNATIONAL HUMAN RIGHTS LAW

International human rights law is reflected, inter alia, in the Universal Declaration of Human Rights, as well as in a number of international human rights treaties and in customary international law. In particular, the core universal human rights treaties are:

- The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol;
- The International Covenant on Civil and Political Rights and its two Optional Protocols;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;

³ See in this respect the decision of the International Court of Justice on the *North Sea Continental Shelf* cases, *I.C.J. Reports 1969*, p. 3.8

⁴ The High Commissioner has recalled that, over the years, the General Assembly, the Commission on Human Rights and, more recently, the Human Rights Council expressed the view that, in situations of armed conflict, parties to the conflict had legally binding obligations concerning the rights of persons affected by the conflict. The Council also recognized the importance and urgency of these problems. In line with recent international jurisprudence and the practice of relevant treaty bodies, the Council acknowledged that human rights law and international humanitarian law were complementary and mutually reinforcing (A/HRC/11/31, para. 5).

- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- The Convention on the Rights of the Child and its two Optional Protocols;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The International Convention for the Protection of All Persons from Enforced Disappearance; and
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol.

There is a growing body of subject-specific treaties and protocols as well as various regional treaties on the protection of human rights and fundamental freedoms. Moreover, resolutions adopted by the General Assembly, the Security Council and the Human Rights Council, case law by treaty bodies and reports of human rights special procedures, declarations, guiding principles and other soft law instruments contribute to clarifying, crystallizing and providing principled guidance on human rights norms and standards, even if they do not contain legally binding obligations per se, except those that constitute rules of international custom.⁵

International human rights law is not limited to the rights enumerated in treaties, but also comprises rights and freedoms that have become part of customary international law, binding on all States, including those that are not party to a particular treaty. Many of the rights set out in the Universal Declaration of Human Rights are widely regarded to have this character.⁶

In addition, some rights are recognized as special conditions such as customary international law (*ius cogens*), which means that no reduction is acceptable under any circumstances and that it prevails, in particular, in other international obligations. Prohibition of torture, slavery, genocide, racism and crimes against humanity, and the right to self-determination are widely

WORDS SPEAK

⁵ See, for example, resolution 60/147, by which the General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and in which it emphasized their customary nature when it indicated that the resolution did not entail new international or domestic legal obligations but identified mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law.

⁶ See the Human Rights Committee's observations—in its general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, and in its general comment No. 29 (2001)—that some rights in the International Covenant on Civil and Political Rights also reflect norms of customary international law.

regarded as moral codes, as reflected in the draft articles of the International Law Commission. Similarly, the Human Rights Committee has indicated that the provisions of the International Covenant on Civil and Political Rights representing customary law (and fortiori if they have a code of conduct) may not be binding.

The Committee added that “the State cannot deny the right to engage in slavery, torture, cruel, inhuman or degrading treatment or punishment, to deprive persons of their human rights, to detain and impose freedom of expression, conscience and religion; innocence, killing pregnant women or children, allowing for representation of national, racial or religious hatred, denying people the age of marriage the right to marry, or denying the minority the right to enjoy their culture, to call their own religion, or to use their language. And while the exclusion of certain sections of article 14 would be acceptable, the general reservation of the right to a fair trial would not be.”

In the context of the implementation of human rights obligations, the human rights treaty bodies established to monitor the implementation of core human rights treaties, such as the Human Rights Committee or the Committee on Economic, Social and Cultural Rights, regularly provide general comments, which interpret and clarify the content and extent of particular norms, principles and obligations contained in the relevant human rights conventions.

2. INTERNATIONAL HUMANITARIAN LAW

International humanitarian law is a set of rules that seek to limit the effects of armed conflict on people, including civilians, persons who are not or no longer participating in the conflict and even those who still are, such as combatants. To achieve this objective, international humanitarian law covers two areas: the protection of persons; and restrictions on the means and the methods of warfare. International humanitarian law finds its sources in treaties and in customary international law. The rules of international humanitarian law are set out in a series of conventions and protocols. The following instruments form the core of modern international humanitarian law:

- The Hague Regulations respecting the Laws and Customs of War on Land;

- The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
- The Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
- The Geneva Convention (III) relative to the Treatment of Prisoners of War;
- The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War;
- The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I); and
- The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

The Hague Regulations are generally considered as corresponding to customary international law, binding on all States independently of their acceptance of them. The Geneva Conventions have attained universal ratification. Many of the provisions contained in the Geneva Conventions and their Protocols are considered to be part of customary international law and applicable in any armed conflict.⁷

PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW

Human rights are rights available to all people, regardless of their nationality, place of residence, gender, nationality or ethnicity, color, religion, language, or other status. All these rights are related, interdependent and inseparable. They are often exposed to and enforced by legal procedures, by agreement, international customary law, general principles and other sources of international law. International human rights law sets out the obligations of the State to act in certain ways or to refrain from doing certain things, in order to promote and protect human rights and fundamental freedoms for individuals or groups.

Human rights include rights and obligations. Countries take responsibility under international law to respect and protect human rights. The obligation to respect means that States should refrain from interfering with or minimizing human rights.

⁷ For a detailed analysis of customary rules of international humanitarian law, see International Committee of the Red Cross, *Customary International Humanitarian Law*, by Jean-Marie Henckaerts and Louise Doswald-Beck (Cambridge University Press, 2005).

The obligation to protect requires States to protect individuals and groups from the violation of human rights. Commitment means that the State must take concrete steps to facilitate the enjoyment of human rights. As individuals, we all have human rights, but each of us must also respect the rights of others.

International humanitarian law limits the use of violence in armed conflicts to save those who do not participate or no longer directly participate in the fight, and at the same time limit the violence to the extent necessary to reduce the enemy's military capabilities. Both in reducing violence and regulating the treatment of conflict-affected people in other ways, international humanitarian law strike a balance between humanity and the needs of war. While dealing with it, the laws of international human rights law and international aid law are very different, their properties are the same and both protect people in the same ways.

The most important difference is that the protection of international humanitarian law is based largely on the divisions - especially between citizens and warriors - that are unknown in international human rights law.

➤ **Protected rights**

International humanitarian law is traditionally made in accordance with the code of conduct for international organizations and armed groups, and international human rights law is reflected in the individual rights of individual visitors to the State. Today, a growing number of international law laws, particularly important guarantees for all those in power in a group that violates international human rights law rules in non-international military disputes, are being made in accordance with civil rights, e.g., the right of the people to the freedom of the individual and to the protection of the rights of their relatives.

International humanitarian law provides for the protection of many civil and political rights (e.g., the right to life of enemies set aside for war or justice guarantees), economic, social and cultural rights (e.g. the right to health and the right to food) and group rights (e.g. the right to a healthy environment). This is especially true of the wounded and the sick, who must be respected, protected, collected and cared for.

➤ **Modes of protection**

International human rights law sets out the obligations of respecting, protecting and achieving the simplest of all human rights. These three terms make it possible to determine whether international human rights obligations have been violated. Although these terms have not been traditionally used in international

humanitarian law, obligations arising from their laws can be divided into similar categories. Since the United States has obligations under certain obligations (obligatory obligations) or abolition (obligatory obligations) under both branches, it may be subject to violations of international human rights and human rights law by any act, excess or improper act. In international law to help people they have a clear obligation to respect and ensure respect.

In international human rights law, the obligation to respect requires countries not to take steps that would prevent people from acquiring certain rights. For example, the right to adequate food should primarily be available to right-holders themselves through their economic and other activities. Countries have a responsibility not to improperly restrict such activities. This commitment to respect from human rights law applies to both natural and man-made disasters. Likewise, the obligation to respect the right to adequate housing means that governments must stop performing or promoting the forced or improper eviction of individuals or groups. Countries should respect human rights to build their own homes and govern their territories according to their own culture, skills, needs and aspirations. Many restrictions on international humanitarian law, e.g. The physical and moral coercion used to protect civilians and prisoners of war, the violence against humanity and violence against civilians in the war, the demand for food and hospitals in human settlements, the attacks on the essentials of survival, work in the same way.

The Committee on Economic, Social and Cultural Rights, referring to the right to food, has demonstrated how these three principles work. It means that “the right to adequate food, as well as any other human right, imposes three types or levels of obligations on American groups: obligations to honor, protect and fulfill. Next, the fulfillment obligation includes both the obligation to simplify and the obligation to provide. The obligation to respect existing access to adequate food requires that U.S. states take no action leading to such restrictions. The protection obligation requires State measures to ensure that businesses or individuals do not deprive people of access to adequate food.

The obligation to achieve (simplify) means that the State must actively participate in activities aimed at strengthening access to the people and in the use of resources and measures to ensure their health, including access to food. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food, the nations have a duty to fulfil that right.”⁸

⁸ General comment No. 12 (1999) on the right to adequate food, para. 15.

➤ **The Principle of Distinction in International Humanitarian Law**

Perhaps the most important difference between international humanitarian law and international human rights law is that the maximum protection a person receives under this category depends on the individual, while under this all people benefit from all human rights, while some human rights instruments establish and protect rights. Certain categories of people, e.g., children, people with disabilities or migrants. In international welfare law, the protection of citizens is not the same as the protection of the military. This distinction is crucial to the perpetuation of hostility: there are fundamental differences between civilians and wars, and between military and social objectives. Wars can be attacked until surrendered or otherwise defeated, while civilians are unintentional, unless and at the time when they directly participate in the war, and are protected by the principles of equality and monitor the negative effects of attacks against military and military objectives.

The difference also contributes to the protection of people who are in the power of the enemy. The protection of captives who become prisoners of war is not the same under the Geneva Convention III as that of the people protected under the Geneva Convention IV. In particular, the former may be detained out of individual custody, while protected citizens may be deprived of their freedom only in the criminal justice system or in the individual decision on important security grounds. Among the citizens in power in a group of armed international conflicts, more and more international social law distinguishes between protected citizens (e.g., especially those of enemy nationality) and other citizens, who benefit only from limited basic guarantees. In addition, the protection of citizens who are protected in a war-torn area is far more limited than in the area where people live. International human rights law does not anticipate that fundamental rights are fundamentally different in each category.

Instead it aligns everyone's rights with the specific needs of those sections, namely, children, women, people with disabilities, immigrants, indigenous people, human rights defenders, etc.

As part of its defence obligation, States must prevent, investigate, punish and ensure the remedy for human rights violations committed by third parties, eg private individuals, commercial entities or other government actors. In this regard, the Human Rights Committee recalled that “the obligatory obligations of the International Covenant on Civil and Political Rights shall be fully discharged if the people are protected by the State, not only in violation of the treaty rights by their agents, but also in the private sector or organizations.”⁹

⁹ General comment No. 31 (2004), para. 8.

CONCLUSION

As shown throughout this study, international human rights law and international humanitarian law are legal entities in a permanent evolution. War is a constant phenomenon, therefore, international human rights law and international humanitarian law need to be constantly adjusted to avoid gaps in the security they provide. Changes in the law are largely based on the functioning of the various organs that govern compliance with the system. The rule of law is the body of the judiciary, but also the bodies of the treaties, it is an important source of interpretation and is essential to the development of the system. But to apply these rules properly and, most importantly, to provide adequate protection for vulnerable people requires a full understanding of how these different practices interact and complement each other and how they interact to achieve the highest level of protection.

The discussion of their cooperation is certainly part of a broad legal debate on the fragmentation and unity of international law. As a result, recent legal disputes have focused on building mechanisms to ensure the full security of the individual. For example, in most cases, one law needs to be transferred to another law, as is the case with Article 3 of the Geneva Convention, which uses concepts developed in more detail in human rights instruments, including in the Universal Declaration of Human Rights.

Similarly, on certain occasions human rights law needs to be interpreted in the context of international humanitarian law, as done by the International Court of Justice in its advisory opinion on the *legality of the threat or use of nuclear weapons*.

Concerning their complementarity, both human rights law and international humanitarian law inform each other in a number of ways. In the context of the Human Rights Council's discussions on this subject, different experts have highlighted that in certain complex situations some type of test may be necessary to assess the most adequate legal framework to be applied in a particular situation.